

STATE OF MICHIGAN
COURT OF APPEALS

FREDERICK PEOPLES,

Plaintiff-Appellant,

v

YPSILANTI POLICE OFFICER GRESS and
YPSILANTI POLICE OFFICER CYRBOK,

Defendants-Appellees,

and

WOODEN NICKEL,

Defendant.

UNPUBLISHED

June 13, 2006

No. 259376

Washtenaw Circuit Court

LC No. 03-001098-CZ

Before: O’Connell, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from the order granting defendants-appellees’ motion for summary disposition. The claims presented to the trial court were false arrest, false imprisonment, and unlawful arrest in violation of 42 USC 1983. The trial court also denied plaintiff’s motion to amend his complaint to include a malicious prosecution claim. We affirm.

This case arises from plaintiff’s arrest by defendants Gress and Cyrbok¹ for trespassing. Plaintiff was arrested outside of the Wooden Nickel, a Ypsilanti bar, after he refused the orders of police officers to leave the premises. Plaintiff alleges that he had the owner’s permission to remain on the premises and that defendants lacked probable cause to arrest him. Plaintiff admits that Darrin Waddell, who was co-owner of the Wooden Nickel at the time, asked him to leave the bar, but he claims that Waddell gave him permission to wait outside while Waddell looked for plaintiff’s friend. While he was standing outside, plaintiff claims that he was harassed by Matthew Bowles, a bouncer at the Wooden Nickel, after which plaintiff called 911 from his cell

¹ Because defendant Wooden Nickel was dismissed early in the suit and has not participated in this appeal, the term “defendants” refers only to officers Gress and Cyrbok.

phone, and the officers were dispatched to the scene. According to Gress, he received another dispatch to the Wooden Nickel while en route, this time arising from a complaint registered by one of the bar's bouncers or its manager. The complaint related to a patron who was refusing to leave the premises.

The officers testified that when they arrived at the Wooden Nickel, they were informed by Waddell and Bowles that plaintiff had been asked to leave and refused. They further testified that they watched Waddell directly ask plaintiff to leave. Although plaintiff disputes that anyone from the bar said anything directly to him after the officers arrived, he does not dispute Gress's testimony that Bowles pointed him out as the individual "they wanted off the property and to leave." Plaintiff admits that after the officers demanded that he leave the property, he walked to the edge of the property and then stopped briefly to pull out his cellular phone and scroll through its directory looking for someone who could pick him up.

Plaintiff argues that the officers lacked probable cause to arrest him for trespassing, so his claims of false arrest, false imprisonment, and his motion to amend the complaint for malicious prosecution were all valid and should have gone to trial. We disagree. We review de novo a trial court's decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

To prevail on a claim of malicious prosecution, a plaintiff must demonstrate that the charge was not supported by probable cause. *Matthews v Blue Cross & Blue Shield of Michigan*, 456 Mich 365, 378; 572 NW2d 603 (1998). Likewise, "to prevail on a claim of false arrest or false imprisonment, the plaintiff must show that the arrest was not legal, i.e., that it was made without probable cause." *Tope v Howe*, 179 Mich App 91, 105; 445 NW2d 452 (1989). "Where the facts are undisputed, the determination whether probable cause exists is a question of law for the court to decide." *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 18; 672 NW2d 351 (2003). A trespass is committed under MCL 750.552 when "any person being on the land or premises of another, upon being notified to depart therefrom by the owner or occupant, the agent or servant of either, . . . without lawful authority neglects or refuses to depart therefrom"

Plaintiff testified that Waddell had given him permission to wait outside the bar, but he does not dispute that Bowles told the officers that plaintiff was repeatedly asked to leave by him and by the owner. Gress knew that Bowles was employed as a bouncer for the Wooden Nickel, and was also aware of the second dispatch regarding the refusal of a belligerent patron to leave the premises. Under the circumstances, the officers had sufficient information to believe that plaintiff had probably been ordered to leave the premises and yet there he remained. This belief was essentially confirmed when they personally asked plaintiff to leave at Bowles's behest, and plaintiff walked to the edge of the Wooden Nickel's parking lot, stopped short of leaving the property, and started placing a call on his cellular phone. Although plaintiff testified that Waddell did not come outside to talk with defendants until after he had been arrested, he acknowledged that Bowles was outside when defendants arrived. Plaintiff admits that defendants told him he needed to leave to premises or he would be arrested, and he also admits that he initially complied with defendants' command to leave, but then stopped. At that point, plaintiff was trespassing.

Plaintiff argues that he created a genuine issue of fact because he informed the officers that Waddell had specifically given him permission to remain on the premises. "A policeman,

however, is under no obligation to give any credence to a suspect's story nor should a plausible explanation in any sense require the officer to forego arrest pending further investigation if the facts as initially discovered provide probable cause." *Criss v City of Kent*, 867 F2d 259, 263 (CA 6, 1988). In this case, viewing the facts in plaintiff's favor, the officers arrived to find Bowles and plaintiff on the scene. Bowles, as the servant of the Wooden Nickel, explained to them that plaintiff was repeatedly told to leave the premises and he refused, countering that the owner had given him permission. The officers were not obligated to believe plaintiff, especially given the second dispatch and their familiarity with Bowles. Under the circumstances, the officers had probable cause to believe that plaintiff had been notified to leave and, in their presence, was unlawfully refusing to leave the premises. Because the information, taken as a whole, provided the officers with probable cause, plaintiff's claims fail.

Plaintiff also argues that the trial court erred in granting summary disposition for his 42 USC 1983 claim of unlawful arrest in violation of the Fourth Amendment. Because the arrest was lawful, plaintiff's 42 USC 1983 claim also fails.

Affirmed.

/s/ Peter D. O'Connell
/s/ William B. Murphy
/s/ Kurtis T. Wilder